

Senate Bill 96

By: Senators Golden of the 8th and Stoner of the 6th

AS PASSED

AN ACT

To amend Article 11 of Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to drug-free workplace programs, so as to provide for onsite testing; to provide for oral testing; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 11 of Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to drug-free workplace programs, is amended by revising Code Section 34-9-415, relating to types, procedures, reports, confirmation, and laboratory qualifications for tests, as follows:
"34-9-415.

(a) All testing conducted by an employer shall be in conformity with the standards and procedures established in this article and all applicable rules adopted by the State Board of Workers' Compensation pursuant to this article. However, an employer shall not have a legal duty under this article to request an employee or job applicant to undergo testing.

(b) An employer is required to conduct the following types of tests in order to qualify for the workers' compensation insurance premium discounts provided under Code Section 34-9-412 and Code Section 33-9-40.2:

(1) An employer must require job applicants to submit to a substance abuse test after extending an offer of employment. Testing at the employer worksite with on-site testing kits that satisfy testing criteria in this article shall be deemed suitable and acceptable postoffer testing. Limited testing of job applicants by an employer shall qualify under this paragraph if such testing is conducted on the basis of reasonable classifications of job positions;

(2) An employer must require an employee to submit to reasonable suspicion testing;

(3) An employer must require an employee to submit to a substance abuse test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group;

- (4) If the employee in the course of employment enters an Employee Assistance Program or a rehabilitation program as the result of a positive test, the employer must require the employee to submit to a substance abuse test as a follow-up to such program. However, if an employee voluntarily entered the program, follow-up testing is not required. If follow-up testing is conducted, the frequency of such testing shall be at least once a year for a two-year period after completion of the program and advance notice of the testing date shall not be given to the employee;
- (5) If the employee has caused or contributed to an on the job injury which resulted in a loss of worktime, the employer must require the employee to submit to a substance abuse test; and
- (6) Urinalysis conducted by laboratories, testing at the employer worksite with on-site testing kits, or use of oral testing that satisfies testing criteria in this article shall be deemed suitable and acceptable substance abuse testing.
- (c) Nothing in this Code section shall prohibit a private employer from conducting random testing or other lawful testing of employees.
- (d) All specimen collection and testing under this Code section shall be performed in accordance with the following procedures:
- (1) A specimen shall be collected with due regard to the privacy of the individual providing the specimen and in a manner reasonably calculated to prevent substitution or contamination of the specimen;
- (2) Specimen collection shall be documented, and the documentation procedures shall include:
- (A) Labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results; and
- (B) An opportunity for the employee or job applicant to record any information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. The providing of information shall not preclude the administration of the test, but shall be taken into account in interpreting any positive confirmed results;
- (3) Specimen collection, storage, and transportation to the testing site shall be performed in a manner which will reasonably preclude specimen contamination or adulteration;
- (4) Each initial test conducted under this Code section shall be conducted by a laboratory as described in subsection (e) of this Code section or conducted using an on-site testing kit or oral testing that satisfies the testing criteria in this article. Each confirmation test conducted under this Code section, not including the taking or collecting of a specimen

to be tested, shall be conducted by a laboratory as described in subsection (e) of this Code section;

(5) A specimen for a test may be taken or collected by any of the following persons:

(A) A physician, a physician's assistant, a registered professional nurse, a licensed practical nurse, a nurse practitioner, or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment;

(B) A qualified person certified or employed by a laboratory certified by the National Institute on Drug Abuse, the College of American Pathologists, or the Georgia Department of Human Resources;

(C) A qualified person certified or employed by a collection company;

(D) For the purpose of a pre-job offer screening only, a person trained and qualified to conduct on-site testing; or

(E) For the purpose of a pre-job offer screening only, a person trained and qualified to conduct oral testing, if an oral test is used;

(6) Within five working days after receipt of a positive confirmed test result from the laboratory, an employer shall inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant;

(7) The employer shall provide to the employee or job applicant, upon request, a copy of the test results;

(8) An initial test having a positive result must be confirmed by a confirmation test conducted in a laboratory in accordance with the requirements of this article;

(9) An employer who performs drug testing or specimen collection shall use chain of custody procedures to ensure proper record keeping, handling, labeling, and identification of all specimens to be tested. This requirement shall apply to all specimens, including specimens collected using on-site testing kits;

(10) An employer shall pay the cost of all drug tests, initial and confirmation, which the employer requires of employees;

(11) An employee or job applicant shall pay the cost of any additional tests not required by the employer; and

(12) If testing is conducted based on reasonable suspicion, the employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept

confidential by the employer pursuant to Code Section 34-9-420 and retained by the employer for at least one year.

(e)(1) No laboratory may analyze initial or confirmation drug specimens unless:

- (A) The laboratory is approved by the National Institute on Drug Abuse or the College of American Pathologists;
- (B) The laboratory has written procedures to ensure the chain of custody; and
- (C) The laboratory follows proper quality control procedures including, but not limited to:
 - (i) The use of internal quality controls including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment and periodic use of blind samples for overall accuracy;
 - (ii) An internal review and certification process for drug test results conducted by a person qualified to perform that function in the testing laboratory;
 - (iii) Security measures implemented by the testing laboratory to preclude adulteration of specimens and drug test results; and
 - (iv) Other necessary and proper actions taken to ensure reliable and accurate drug test results.

(2) A laboratory shall disclose to the employer a written test result report within seven working days after receipt of the sample. All laboratory reports of a substance abuse test result shall, at a minimum, state:

- (A) The name and address of the laboratory which performed the test and the positive identification of the person tested;
- (B) Positive results on confirmation tests only, or negative results, as applicable;
- (C) A list of the drugs for which the drug analyses were conducted; and
- (D) The type of tests conducted for both initial and confirmation tests and the minimum cut-off levels of the tests.

No report shall disclose the presence or absence of any drug other than a specific drug and its metabolites listed pursuant to this article.

(3) Laboratories shall provide technical assistance to the employer, employee, or job applicant for the purpose of interpreting any positive confirmed test results which could have been caused by prescription or nonprescription medication taken by the employee or job applicant.

(f) If an initial drug test is negative, the employer may in its sole discretion seek a confirmation test. Only laboratories as described in subsection (e) of this Code section shall conduct confirmation drug tests.

(g) All positive initial tests, regardless of the testing methodology used, shall be confirmed using the gas chromatography/mass spectrometry (GC/MC) method or an equivalent or more accurate scientifically accepted methods approved by the National Institute on Drug Abuse as such technology becomes available in a cost-effective form."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.